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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

████████████████████
████████████████████
████████████████████

DECISION
Case #: FOS - 177500

PRELIMINARY RECITALS

Pursuant to a petition filed on October 24, 2016, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Winnebago County Department of Human Services regarding Foster Care, a hearing was held on December 7, 2016, by telephone.

The issue for determination is whether the Winnebago County Department of Human Services (the agency) correctly denied foster care licenses to █████ and his wife, █████.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

████████████████████
████████████████████
████████████████████

█
█

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, WI 53703

By: ██████████, Corporation Counsel
Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. The Petitioners, █████ and █████, are residents of Winnebago County.

2. Sometime in September 2016, the Winnebago County circuit court placed four month old [REDACTED] in the custody of the Petitioners who are the child's great aunt and uncle. (Testimony of [REDACTED]; Testimony of [REDACTED])
3. On October 1, 2016, the Petitioners completed a Joint Court Ordered Kinship Care and Foster Care Application. (Exhibits 2 and 3)
4. As part of the application process, the Petitioners were also asked to complete Background Information Disclosures (BIDs). [REDACTED] in his disclosure, checked the box under "No", when asked the questions, "Do you have any criminal charges pending against you or were you ever convicted of any crime anywhere, including in federal, state, county, local, military, and tribal courts? Have you ever been convicted of another offense such as a municipal ordinance violation or civil offense under a local ordinance?" (Exhibit 4)
5. In 2009, [REDACTED] was convicted, via default judgment, of a municipal/traffic violation for driving while suspended. In 2006, [REDACTED] was convicted, via default judgment, of a municipal violation for disorderly conduct/indecent conduct. (Exhibit 9; testimony of [REDACTED])
6. On October 12, 2016, the agency sent the Petitioners a notice that they were both being denied foster care licenses because [REDACTED] failed to disclose his municipal convictions. The agency cited Wis. Admin. Code DCF 56.05(1)(b)1.a., as the legal basis for the denial. (Exhibit 13)
7. The Petitioners filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 24, 2016. (Exhibit 1)

DISCUSSION

The Petitioners filed an appeal because both of them were denied Foster Care Licenses, due to an omission on [REDACTED]'s BID.

In its October 12, 2016 notice, the agency cites the wrong administrative code provision, as a basis for denying the Petitioners' applications for foster care licenses. The agency cites to Wis. Admin. Code §DCF 56.05(1)(b)1.a., but that provision states:

“ ‘ All foster parents.’ As evidenced through interviews with foster family members, the use of formalized assessment systems, communication with references, and other methods considered to be effective components of a comprehensive foster home study, a licensee shall have or exhibits all of the following characteristics to a degree that will allow the licensee to adequately provide foster care services:...An adequate understanding of what it mean to be a foster child and a recognition of a child's strengths and needs consistent with the child's age and abilities, or a motivation to learn...”

The applicable administrative code provision is Wis. Admin. Code §DCF 56.05(1)(a)2., which states:

“The applicant or licensee shall give truthful and sufficient information to enable the licensing agency to verify whether or not her or she meets the requirements under subd. 1. Giving false information or withholding relevant information shall constitute grounds for denial or revocation of the license.”

With regard to [REDACTED]'s application, it is undisputed that she completed her portions of the application truthfully and accurately. Indeed, she did not sign the BID completed by [REDACTED], and there is no evidence that [REDACTED] acted in collusion with [REDACTED] to trick the agency into giving her a foster care license. Further, the

agency has presented no argument as to why [REDACTED] is unfit to hold a foster care license. I note that under Wis. Admin. Code § DCF 56.055(2), that [REDACTED]'s ordinance violations do not constitute an automatic bar to [REDACTED] receiving a foster care license. As such, the agency has not established a reason, under Wis. Admin. Code § DCF 56.05, that would disqualify [REDACTED] from holding a foster care license. Therefore, the agency's denial of a foster care license to [REDACTED] was incorrect, and the agency will have to continue processing [REDACTED]'s application.

With regard to [REDACTED]'s application and BID, [REDACTED] and [REDACTED] both assert that they misread the question in the BID and did not realize that the question was also asking for information about ordinance violations. The Petitioners assert that the omissions regarding [REDACTED]'s municipal ordinance violations were unintentional. However, the Administrative Code provision cited above does not require the act of giving false information or withholding relevant information to be an intentional act of deceit before a foster care application is denied.

Further, the inquiry clearly asked, "Have you ever been convicted of another offense such as a municipal ordinance violation or a civil offense under a local ordinance?" There is nothing ambiguous about that question, but [REDACTED] did not give accurate information about his prior municipal convictions. Consequently, the administrative code provision mandates that his application for a foster care license be denied.

CONCLUSIONS OF LAW

1. The agency incorrectly denied [REDACTED]'s application for a foster care license.
2. The agency correctly denied [REDACTED]'s application for a foster care license.

THEREFORE, it is

ORDERED

That within 10 days of this decision, the agency continue processing [REDACTED]'s application for a foster care license.

In all other respects the appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this

decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of January, 2017

\s _____
Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 30, 2017.

Winnebago County Department of Human Services

DCF - Foster Care

Attorney [REDACTED]